



# TZEDEK DC

Legal Help for People in Debt

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UNITED STATES OF AMERICA  
BEFORE THE  
CONSUMER FINANCIAL PROTECTION BUREAU

**COMMENT ON CFPB REQUEST FOR INFORMATION  
RE: RELATIONSHIP BANKING AND CUSTOMER SERVICE**

**Request for Information Re: Relationship  
Banking and Customer Service**

CFPB Docket No. CFPB-2022-0040

## Introduction

Tzedek DC is an independent, public-interest center headquartered at the University of the District of Columbia David A. Clarke School of Law. Inspired by the ancient Hebrew teaching “*Tzedek tzedek, tzedek tirdof*,” or “*Justice, justice, you shall pursue*,” Tzedek DC’s mission is to safeguard the financial health and legal rights of DC residents with lower incomes facing debt-related legal crises. Tzedek DC offers direct legal services at no cost to low to moderate income Washington, DC residents with debt and other consumer-related legal issues. Tzedek DC represents and advocates for vulnerable consumers in the District. We have experience advocating for clients to a number of financial institutions where our clients seek to exercise their rights to information about their accounts.

Our work uniquely positions us to comment on trends in customer service problems that impede consumers’ ability to access the information to which they are legally entitled. Tzedek DC’s Disabilities Community Project and Economic Exploitation and Fraud Prevention Project, as well as Tzedek DC’s staff more broadly, regularly encounter these concerns with Direct Express. The Disabilities Community Project at Tzedek DC focuses on the rights of people with disabilities, who face unique challenges within the legal system and within the context of consumer protection. The Disabilities Communities Project seeks to empower disabled clients as a project led by a member of the disabled community. Tzedek DC’s Economic Exploitation and Fraud Prevention Project focuses on the needs of victims of economic crimes like identity theft, fraud, and unauthorized transactions. In these comments, we focus on our work with Comerica Bank, which runs the Direct Express program. The Comerica Bank-managed Direct Express debit Mastercard is a way for those who receive federal benefits, such

as Social Security Administration and Veterans Affairs benefits, to receive those benefits directly to a debit card.

Section 1034(c) of the Consumer Financial Protection Act requires banks to, “in a timely manner, comply with a consumer request for information...concerning the account of the consumer,” unless the requested information is confidential or collected privately by the bank to prevent unlawful activity.<sup>1</sup> The Consumer Financial Protection Bureau has requested information on what customer service obstacles consumers face in the banking market when seeking information pursuant to § 1034(c) that have adversely affected consumers’ “ability to bank.”<sup>2</sup>

Tzedek DC appreciates the CFPB reach-out to community members for this feedback. We urge the CFPB to consider the practices of Comerica Bank regarding its Direct Express card program. Our clients consistently encounter insurmountable customer service obstacles when seeking information about their Direct Express accounts.

What follows is a summary of customer service obstacles we have seen Direct Express cardholders encounter and the consequences of these barriers for consumers’ legal rights. The current practices of Comerica in running Direct Express systematically deny consumers their § 1034(c) right to timely account information, among other rights under federal law, in several ways:

- Consumers face long wait times (hours long in most cases) before reaching a customer service representative over the phone, and representatives sometimes end calls abruptly after picking up.
- Customer service representatives generally refuse to speak with our attorneys when they are advocating for consumers who are the victims of fraud or theft, even when the cardholder is also on the line or a retainer has been signed.
- Consumers may incur fees, both directly and indirectly, when they attempt to access information about their Direct Express accounts.
- Comerica, which runs Direct Express, does not publish clear policies that guide consumers seeking to request information or file a complaint when they suspect they are victims of fraud or theft. Without guidelines on how to ensure requests for information are recorded and processed, our clients’ cases are closed without resolution, and they are forced to assume the liability for the lost funds.
- Comerica, which runs Direct Express, does not provide detailed information to consumers when denying EFTA claims on debit cards.

Comerica’s’ noncompliance with the CFPB has civil rights implications. Because the Direct Express program only serves people receiving federal benefits, its systematic denial of account information to consumers disproportionately affects older consumers, consumers with disabilities, and consumers with low incomes. More than half of Direct Express cardholders are over the age of 50, and 48 percent of cardholders receive Social Security Retirement (SSA) benefits. Forty-nine percent of cardholders receive Supplemental Security Income (SSI) benefits, meaning they have lower incomes and disabilities or are over the age of 65. Federal benefits via Direct Express are the only source of income for 57 percent of Direct Express cardholders.<sup>3</sup> Accordingly, its problematic customer service policies disproportionately impact more vulnerable populations.

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<sup>1</sup> 12 U.S.C. 5534(c).

<sup>2</sup> Request for Information Regarding Relationship Banking and Customer Service, 87 Fed. Reg. 36828.

<sup>3</sup> A Look at Cardholder Demographics, Direct Express, <https://directexpress.info/2019/06/13/a-look-at-cardholder-demographics/> (last visited July 15, 2022).

## I. Client Experiences: Insurmountable Obstacles to Receiving Information from Direct Express Customer Service

### A. Comerica, which runs the Direct Express program, refused to share documents it relied on to deny clients' dispute of fraudulent charges

In early 2020, a guest staying in a DC resident's home used the resident's Direct Express card without permission to make unauthorized charges resulting in a loss of \$39.28 for the client. The resident, a 57-year-old disabled woman, was in a substance use program at the time and could not have made the charges herself. She reported the fraudulent charges to Direct Express; the bank responded with a letter stating they had investigated her claim and determined no fraud took place. This letter in no way reflected a reasonable investigation as required under the Electronic Funds Transfer Act and Regulation E. Our attorney and client spent more than 16 months requesting that Direct Express send the client copies of documents the institution relied on in its investigation to deny her claim of fraud.

This resident has a disability and relied on her Tzedek DC attorney to be present during calls to help process the information she was hoping to receive from Comerica. The attorney attempted to create three-way calls between himself, the client, and Direct Express customer service. Ensuring these communications took place over three-way calls was particularly important given that this representation took place during the COVID-19 pandemic. Our attorney and client were on hold for a minimum of one hour each time they called; the client reported sometimes not getting through even after waiting on the line for a full workday. The few times their calls were picked up by a representative, the representative told our attorney and client that Direct Express has a blanket policy against three-way calls to discuss accounts, hanging up on them immediately (even when the client was willing to verify her information and release account information to her attorney). On another occasion when the representative said the call could not continue because of their policy on three-way calls, our attorney asked to speak to a supervisor. The representative denied our request and hung up. Once, our attorney and client were together in person while calling Direct Express on one phone, but once an agent picked up, they were hung up on and given a new reason: Comerica in running its Direct Express program prohibits a third party being present in any capacity on calls to request account information.

Given no way to correspond by phone, partially since our client's disability necessitated a third party on the line, her attorney sent a written request to Comerica for the necessary documents and information. Comerica never responded. After spending more than 16 months seeking information from Direct Express that our client was entitled to under § 1034(c), no such documents were provided to our client. Further, failing to promptly provide these documents relied on during the investigation violated the client's rights under the Electronic Funds Transfer Act and Regulation E. 12 C.F.R. § 1005.11(d)(1). Comerica was required to "promptly" provide copies of the documents they relied upon in their investigation once requested. It failed to do so.

### B. Failed attempt to correspond with Direct Express to recover stolen funds for a disabled 87-year-old

We began working with a client in April 2021 regarding fraudulent charges to her Direct Express debit card. The charges were for late-night online purchases, and the eighty-seven-year-old, disabled client whose only source of

income was Supplemental Security Income did not know how to use a computer. Despite the clear impossibility of our client having made these purchases herself, Direct Express denied her dispute. Our attorney and client attempted to contact Direct Express for information on their investigation and decision. They were on hold for at least an hour every time they called; when they finally did reach an agent, the agent often hung up immediately upon learning our attorney was on the call. The agents sometimes stated vague policies against third parties being present on the phone, and sometimes agents hung up without giving any reason. On a few occasions, a customer service agent did engage with our attorney and client, but these instances were sparse and seemingly random. Our attorney and client were never given an explanation of why agents only occasionally engaged with them or what they could do to ensure they could speak to an agent about our client's time-sensitive claim.

Comerica eventually filed a new report and stated it would mail the client a fraud questionnaire. The questionnaire was never received, and possibly never mailed. When counsel and the client attempted to call about the questionnaire and the report, it was as if the previous conversations had never occurred.

After about a month and a half of disputing the fraudulent claims with Comerica, it became more expensive for our client to call Direct Express repeatedly (waiting on hold for hours each time) on her prepaid phone than it was for her to stop disputing the final fraudulent charge of \$10 and assume liability for this loss. We were able to help our client receive a new debit card number to prevent future theft. Our client has yet to recover her losses because of the failure and refusal by Comerica to provide information about the client's Direct Express account that the law required Comerica to provide.

### C. Unresponsive customer service increased client's liability for fraudulent transactions

In a third example, our client, a 57-year-old African American man, did not receive monthly statements for his Direct Express card because Comerica via Direct Express does not provide free monthly statements by paper mail, nor are they automatic—they must be requested. The client was unaware of both of those facts, and this disabled client whose only source of income is Social Security Disability Insurance does not know how to use a computer. This client instead made regular calls to Direct Express customer service to inquire about his balance. On one of these regular calls, the reported balance was lower than expected; the client asked about charges and learned of a recurring fraudulent charge. Since he could not receive regular account statements, the charges were made monthly for nearly two years before he discovered them.<sup>4</sup>

When the client discovered these charges while on the phone with Direct Express in October 2021, he reported the charges as fraudulent to the Direct Express representative. He was informed by the Direct Express representative that he would be provided with several months of statements. Several months passed, and he did not receive anything. The client continued to attempt to reach out to Direct Express, but it was difficult to reach a representative. He finally reached a representative in December 2021. The bank stated his claim was illegitimate because he was alleging the fraud too late and that the October 2021 report had never been recorded, even though the representative he spoke to at the time said his complaint had been filed and outlined specific steps that would be taken. Additional fraudulent charges from the same source had been made since the client reported it two months prior—Direct Express had evidently neither recorded the claim nor cut off the recurring charge. The client

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<sup>4</sup> Cardholders have the option to call customer service and pay a monthly fee to receive paper statements, so computer illiterate clients who cannot afford this fee cannot opt into monthly statements. See *Supra* Part II-C(ii).

then spoke with additional staff at Direct Express. After the December 2021 call, Comerica via Direct Express finally began investigating.

Comerica via Direct Express mailed our client two letters about one month later denying his dispute. First, the bank stated his claim was filed too late to be considered, even though he had followed the proper timelines. Second, the bank sent a letter denying that any fraud took place. Direct Express violated the consumer's rights under Regulation E and the Electronic Funds Transfer Act,<sup>5</sup> and yet the consumer was unable to directly communicate with Direct Express' customer service about these issues in any meaningful way.

## II. Specific Direct Express Policies that Create Consistently Unacceptable Customer Service

Patterns have emerged in our work with Direct Express cardholders highlighting major problems in the bank's practices that pose insurmountable customer service obstacles. These obstacles regularly bar consumer from exercising their right to information under § 1034(c).

### A. Customer service over the phone must be more accessible

We appreciate the questions in the Request for Information targeting one of the most significant problems we face with Direct Express—the accessibility of customer service over the phone.

#### i. What are typical call wait times?

Consumers regularly wait more than three hours when they try to reach a Direct Express representative over the phone to request information. The wait is generally more than one hour. We have waited with clients on the line for three to four hours attempting to request information about their Direct Express accounts. We often must end the call without reaching a representative when the client or attorney is unable to wait additional hours. One client reported waiting an entire workday—seven or eight hours—before having her call picked up.

We understand that Comerica may receive a high volume of calls concentrated at the beginning of each month, when Direct Express consumers are more likely to receive and inquire about federal benefits, account statements, or related information. However, the institution assumed responsibility for managing the distribution of these benefits through Direct Express. Additionally, in order to limit consumer liability under statutes like the EFTA, consumers must report fraud as soon as possible. Accordingly, the bank must maintain a customer service

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<sup>5</sup> Our client's rights under the Electronic Funds Transfer Act (EFTA) were violated by Comerica here. If a consumer reports fraud to a financial institution, the institution must respond within 10 days by either 1) returning the amount lost, or 2) notifying the consumer that the institution has decided to conduct a further investigation to determine whether fraud occurred. If they choose to investigate further, the investigation must be reasonable and completed in 45 days. See 12 C.F.R. § Pt. 1005, App. A. Rather than following EFTA protocol, Direct Express simply sent a letter denying the claim of fraudulent charges to our client two months after he filed the claim. He never received provisional credit or a notice that Direct Express chose to investigate further. Direct Express also failed to investigate at all following the initial complaint in October 2021, further violating the EFTA. Finally, Comerica's statement that the client reported too late for anything to be recovered is inaccurate. The client has 120 days to report and should be able to recover any fraudulent charges that would have been prevented had he reported within the first 60 days. Denying this timeline is also a violation of federal law.

framework with sufficient capacity to meet its contractual obligations, even if this requires increasing capacity during high-volume periods.

#### i. How often are calls dropped or disconnected?

When a call does get through to Direct Express customer service, if we have an attorney on the line with a client, the agent usually hangs up on them immediately after learning of the attorney's presence. *See infra* Part II-C. It is concerning that the few successful calls to customer service are disconnected with regularity. After a call is ended by a representative, our attorneys and clients generally must call back a different day when they can afford to wait several hours on hold.

## B. Direct Express will not speak to attorneys on the phone

#### i. Overview

Direct Express customer service representatives consistently refuse to speak to consumers who have legal representation on the phone. Multiple attorneys have been told repeatedly by representatives that no one other than the cardholder may be present on calls regarding an account.

This practice is nebulous and inconsistent, but it restricts cardholders' access to information about their accounts. Customer service consistently hangs up on attempted three-way calls between an attorney, client, and Direct Express, stating that three-way phone calls are prohibited. Yet representatives have also ended calls or refused to provide information after simply hearing an attorney's voice—not because there were three phones dialed in, but because there was a third party present in any capacity to assist the consumer with their request.<sup>6</sup>

Attorneys are given no alternate method to help clients exercise their § 1034(c) rights. After trying unsuccessfully for months to contact customer service over the phone, our attorneys have sent letters to Comerica via Direct Express seeking account information necessary to demonstrate that our clients were victims of fraud or theft. We have never received a response to these letters. The majority of Direct Express cardholders we work with prefer contacting the bank via phone with legal representation present and cite old age or disability as the basis for this preference. The no-third-parties policy is thus especially concerning for a service intended to serve primarily older people and people with disabilities, who are generally more likely to require accommodations that necessitate a third party on the phone.<sup>7</sup> Comerica Bank's Direct Express policies leave no room for any such third party to assist a cardholder with requesting and processing information.

In our legal advocacy for consumers, we have never encountered such obstacles on calls with any other bank. Other banks in general either 1) allow the representative to be in the line if they receive express permission from the consumer or 2) allow us to communicate with them once we have submitted some form of document proving our authority to speak with them on behalf of the client. If every other bank we work with is able to accommodate consumers who wish to have legal representation on the phone, Comerica should also be able to institute such a reasonable policy for a product designed to serve consumers who are more likely to require assistance on calls.

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<sup>6</sup> One attorney has had calls ended by Direct Express customer service as soon as they heard her voice on the line, before asking whether she was in-person with the client or dialed in from a third number—the agent stated the rule against a third person's presence in any capacity. *See Supra* Part I-B.

<sup>7</sup> For our organization, this policy has made it impossible for attorneys to seek information. However, we also have concerns about other accommodations that would necessitate three-way calls, such as interpreters.



## ii. Barring three-way calls exacerbates difficulties for older consumers and consumers with disabilities in the COVID-19 pandemic

We appreciate your inquiry regarding changes in customer engagement methods resulting from the COVID-19 pandemic. For our organization, three-way phone calls became even more critical when public health guidelines and office policies prevented in-person meetings with clients. Our attorneys still frequently communicate with clients and banks via three-way calls; many of our clients, and even some of our attorneys, still cannot meet in person because they are at high risk for severe COVID-19 infection or are immunocompromised. The prohibition on three-way calls thus disproportionately restricts access to account information for the consumers most susceptible to COVID-19 who cannot meet with legal representation in person. Individuals who have disabilities or who are older are more susceptible to COVID-19; these are the primary groups Direct Express is designed to serve.<sup>8</sup> Accordingly, this policy has had the most severe consequences for our clients who have disabilities and who are seniors.

## C. It can be costly for Direct Express cardholders to receive 1034(c) information about their accounts

The CFPB's interest in "any fees associated with customer service or requests for information" implicates two problematic Direct Express policies.

### i. Hours-long wait times are expensive for prepaid phone users

For clients who use prepaid phones, the exorbitant wait times and often-dropped calls can make it costly to attempt to report fraudulent charges over the phone to Comerica's Direct Express customer service. We have closed a client's case without resolution where it was more expensive for her to wait indefinitely to speak to a Comerica representative than it was to simply assume liability for the \$10 stolen from her account. It is unacceptable for customer service to be so unavailable that consumers can actually lose more money by attempting to contact Comerica to report fraud than they would lose by simply assuming liability for the loss. This practice is especially concerning because the majority of Direct Express cardholders receive their entire income on their Direct Express card.<sup>9</sup> The loss of already limited benefits to fraud—even \$10—can have major ramifications for consumers.<sup>10</sup>

### ii. Direct Express charges cardholders who do not know how to use computers, or who do not have access to computers, for account statements

Direct Express, by default, only provides free monthly account statements online. If a cardholder wants to receive paper statements by mail, they can do so if they 1) call to request these statements, and 2) pay a monthly fee of \$0.75 to continue receiving paper statements. In practice, this imposes an additional fee on cardholders who do not know how to use a computer or do not have access to a computer seeking basic account information. This policy is concerning because Direct Express cardholders are by design likely to be older or have disabilities, and many of our clients who are Direct Express cardholders do not know how to use a computer or have access to a computer.

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<sup>8</sup> See *supra* Introduction.

<sup>9</sup> "57 percent of Direct Express cardholders report that the benefits they receive are their only source of income." A Look at Cardholder Demographics, *supra* note 3.

<sup>10</sup> Our client who lost \$10 to Comerica's unacceptable customer service practices had a monthly income of \$794 in federal benefits and spent \$25 per month on rent. The amount lost by the ban would have constituted 40 percent of her monthly rent.

Individuals living with low incomes, who comprise a significant portion of Direct Express cardholders,<sup>11</sup> are also less likely to have access to the internet.<sup>12</sup> People with disabilities are less likely than nondisabled people to have access to a computer, tablet, smartphone, or broadband services at home.<sup>13</sup>

As a legal services organization with experience working with clients who are Direct Express cardholders, the institution's policy to only share free statements online seems a thinly veiled attempt to extract additional fees from consumers who are already more likely to live with low incomes. For cardholders who cannot afford paper statements, are unable to request them, or are simply unaware of this policy (which has been the case for most of our clients) the online-only statement policy—combined with the near impossibility of receiving information over the phone—prevents minimizing losses under the EFTA if they are victims of fraud or theft.<sup>14</sup>

## D. Consequences of fraud are exacerbated because consumers cannot access account information

### i. Comerica, via Direct Express, is giving consumers false information about account records

A request for information cannot be completed if that request is never recorded. One of our clients was told he successfully filed a claim of fraudulent charges and would receive an account statement in the mail, when in reality no one at the bank recorded his claim. See *supra*, Part I-C. Direct Express later said the client filed his dispute too late to recover provisional credit. § 1043(c) requires institutions to “comply” with consumer requests for any information “in the control or possession” of the institution—this includes a client's right to know whether his complaint has been recorded. Poor customer service in this case prevented successful resolution of fraud and exacerbated our client's personal liability for stolen funds.

Additionally, there have been several accounts at Tzedek DC of experiences speaking with Direct Express customer service representatives over the phone appearing to have no notes or context about previous actions taken on the consumer's account. Each time a customer service representative is actually reached and does not hang up on a call including counsel, not only is it an exorbitant wait time, but counsel must re-explain the entire situation.

### ii. Unclear policies for requesting information bar consumers from receiving answers

Our client experienced the consequences of Comerica's nontransparent Direct Express rules when he was misled to believe his complaint had been filed. Our attorneys encounter these ambiguous and inconsistent rules when they attempt to call customer service and receive contradictory guidance on how they may communicate with the bank. If Comerica has a complex method with which consumers must comply to file a complaint or receive information, they must share that policy with consumers. Consumers' rights to information are being violated by what seem to be ever-changing and obscure policies where consumers have no way of knowing whether they have successfully complied with requirements to receive information, or how to ensure they will receive information in the future.

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<sup>11</sup> See *supra* note 3.

<sup>12</sup> Kendall Swenson and Robin Ghertner, *People in Low-Income Households Have Less Access to Internet Services – 2019 Update*, U.S. Department of Health and Human Services (March 2021), <https://aspe.hhs.gov/sites/default/files/private/pdf/263601/internet-access-among-low-income-2019.pdf>.

<sup>13</sup> Americans with disabilities less likely than those without to own some digital devices, Pew Research Center, <https://www.pewresearch.org/fact-tank/2021/09/10/americans-with-disabilities-less-likely-than-those-without-to-own-some-digital-devices/> (last visited July 15, 2022).

<sup>14</sup> See *supra* for an example of a computer-illiterate client with funds stolen monthly for two years.



## E. Comerica's failure to comply with §1034(c) in running its Direct Express program infringes on consumers' rights under the EFTA

Comerica in running Direct Express increases liability for victims of fraud or theft through unacceptable wait times, failure to record consumer requests for information, and consistent refusals to communicate with attorneys. Our clients have been denied their rights under the EFTA as a direct result of Comerica's failure to provide timely information in response to § 1034(c) requests.<sup>15</sup>

Long call wait times are not just frustrating; they prevent our clients from recovering stolen funds they are entitled to under the EFTA and Regulation E. Cardholders who are on hold for several hours a day, for multiple days, without ever reaching a representative (or having a representative hang up shortly after they answer) cannot inquire about unexpected charges or report fraudulent charges within the EFTA-specified time periods. This is problematic where the EFTA restricts liability according to how soon a cardholder reports fraudulent charges to the bank after they are made.<sup>16</sup>

Our clients' experiences with Comerica via Direct Express denying disputes are detailed in Part I. None of these clients were given the documents the bank relied on to deny their disputes, despite thorough attempts to access that information. Such consistent failure to provide information about these investigations would effectively allow Comerica's Direct Express to have an internal policy of automatically denying every claim without conducting a reasonable investigation. The institution is escaping its legal obligations under the EFTA and Regulation E by failing to share § 1034(c) information requested by consumers seeking to confirm whether a reasonable investigation occurred.<sup>17</sup>

## Conclusion

Tzedek DC urges the CFPB to consider the pattern of incidents by Comerica management of Direct Express in denying its cardholders' § 1034(c) rights through inaccessible phone customer service, refusal to correspond with attorneys, financial barriers to information, and a lack of clear policies for consumers seeking information. We especially encourage the CFPB to consider the disproportionate impact of these exploitative policies on seniors and people with disabilities.

Thank you for your consideration of Tzedek DC's comment to this Request for Information.

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<sup>15</sup> If a consumer notifies a financial institution of loss or theft within two business days of the loss or theft, the consumer's maximum liability is \$50. If a consumer notifies the institution more than two business days but fewer than 60 business days after the loss or theft, the consumer's maximum liability is \$500. However, if the consumer notifies the bank more than 60 days after the first unauthorized transfer, the consumer's liability is only restricted to a maximum of \$500 for losses incurred during the first 60 days, and there is no cap on liability for additional unauthorized transfers that occurred more than 60 days after the first incident. See 12 C.F.R. 205.6.

<sup>16</sup> See *supra* note Part I-C and notes 5 and 12.

<sup>17</sup> See *supra* note 5.